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attempt to change its obligation, and would be void. The proof could not therefore be legally given: *Mutual Ins. Co. v. Hone*, 2 Coms., 235; *Beirne v. Dord*, 1 Seld., 101; *Thompson v. Ashton*, 14 J. 317; *Thompson v. Riggs*, 5 Wall., 663.

This is an action for the conversion of the stock, and the rule of damages was correctly laid down: *Romane v. Allen*, 26 N. Y. R., 309; *Taft v. Rodgers*, 31 N. Y. R., 676; *Burt v. Dutcher*, 34 N. Y. R., 493.

The order granting a new trial is reversed, and judgment for the plaintiff upon the verdict affirmed with costs.

GROVER J. dissented, holding that plaintiff was bound to keep his margin good without notice, and having failed to do so was not entitled to recover at all. He was also of opinion that the evidence of custom should have been admitted, and that if plaintiff could recover at all he was entitled only to nominal damages.

WOODRUFF J. also dissented, holding that evidence of the custom of brokers should have been admitted, and concurring with GROVER J. as to the measure of damages.

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### *Supreme Court of the United States.*

#### THE BARK GRAPESHOT, GEO. LAW, CLAIMANT, v. WALLERSTEIN.

When, during the late civil war, portions of the insurgent territory were occupied by the Federal forces, the President, as commander-in-chief, as a measure of government of such territory, had power legally to establish therein courts for the determination of controversies and the administration of justice.

The United States Provisional Court for the State of Louisiana, organized under an order of the President, of October 20, 1862, was authorized to exercise the jurisdiction conferred by that order—that is to say, “to hear, try and determine all causes, civil and criminal, including causes in law, equity, revenue and admiralty.”

When Congress, by virtue of its constitutional authority over national courts, enacted that “all judgments, orders, decrees and decisions” of the “United States Provisional Court for the State of Louisiana, in cases which would ordinarily have been properly cognizable by the Circuit Court of the United States, should be transferred to” and become the judgments, orders, decrees and decisions of that court, enforced, pleaded and proved accordingly, a decree in admiralty rendered in said United States Provisional Court, became at once the decree of the United States Circuit Court, and from it an appeal lay to the Supreme Court of the United States.

This was an appeal from a decree of the United States Provisional Court for the State of Louisiana, by Act of Congress made a decree of the United States Circuit Court.

In October, 1862, the City of New Orleans, with some of the surrounding country, being held by the forces of the United States in armed belligerent occupation, the President of the United States created, by an executive order, the United States Provisional Court for the State of Louisiana, appointing CHAS. A. PEABODY as judge, and giving, among other things, "authority to hear, try and determine all causes, civil and criminal, including causes in law, equity, revenue and admiralty, and particularly all such powers and jurisdiction as belong to the District and Circuit Courts of the United States, conforming his proceedings, so far as possible, to the course of proceedings and practice which has been customary in the courts of the United States and Louisiana—his judgment to be final and conclusive."

This suit was originally brought in the District Court of the United States, for the district of Louisiana, and was heard afterwards on appeal in the Circuit Court, before Judge CAMPBELL, of that court, who had ordered further proofs to be taken. Those were taken in Rio Janeiro, and subsequently the case came into the United States Provisional Court, and was there heard and decided, and a decree duly entered affirming the decision of the District Court.

After the termination of the war, Congress enacted that the records and proceedings of the United States Provisional Court for Louisiana should be transferred to and become the records of the Circuit and District Courts of the United States for the Eastern District of Louisiana, and that all judgments, orders and decrees of said court proper for the jurisdiction of the Circuit Court of the United States, and so transferred to it, should become the judgments, orders and decrees of said Circuit Court, and be enforced, pleaded and proved accordingly: 16 U. S. Stat., 344.

From the decisions of the United States Provisional Court no appeal lay. The judgments and decrees of that court were "final and conclusive," and this was the case as to decisions

rendered on appeal (as in this case), as well as those in cases originating there.

It was claimed, however, that the decree in this case made by Judge PEABODY, affirming the decree of the United States District Court, had become by virtue of the Act of Congress referred to, a decree of the United States Circuit Court, and that, as such, an appeal would lie from it to the Supreme Court of the United States. On this ground the appeal was brought. The other facts appear sufficiently in the opinion of the Court.

*Caleb Cushing* and *Gen. Benjamin F. Butler*, for the appellants.

*Thomas J. Durant*, for respondents.

The opinion of the court was delivered by

CHASE, C. J.—The first question to be examined in this case, is one of jurisdiction. The suit shown by the record was originally instituted in the District Court of the United States for the District of Louisiana, where a decree was rendered for the libellant. From this decree an appeal was taken to the Circuit Court, where the case was pending, when, in 1861, the proceedings of the court were interrupted by the civil war. Louisiana had become involved in the rebellion, and the courts and officers of the United States were excluded from its limits. In 1862, however, the national authority had been partially re-established in the state, though still liable to be overthrown by the vicissitudes of war. The troops of the Union occupied New Orleans, and held military possession of the city and such other portions of the state as had submitted to the General Government. The nature of this occupation and possession was fully explained in the case of *The Venice*, 2 Wall., 259.

Whilst it continued, on the 20th of October, 1862, President Lincoln, by proclamation, instituted a Provisional Court for the State of Louisiana, with authority, among other powers, to hear, try and determine all causes in admiralty. Subsequently, by consent of parties, this cause was transferred into the Provisional Court thus constituted, and was heard, and a decree again rendered in favor of the libellants. Upon the restoration

of civil authority in the state, the Provisional Court, limited in duration, according to the terms of the proclamation, by that event, ceased to exist.

On the 28th of July, 1866, Congress enacted that all suits, causes and proceedings in the Provisional Court, proper for the jurisdiction of the Circuit Court of the United States for the Eastern District of Louisiana, should be transferred to that court, heard and determined therein; and that all judgments, orders and decrees of the Provisional Court in causes transferred to the Circuit Court, should at once become the orders, judgments and decrees of that court, and might be enforced, pleaded and proved accordingly: 16 U. S. Stat., 344.

It is questioned upon these facts, whether the establishment by the President of a provisional court was warranted by the constitution.

That the late rebellion, when it assumed the character of civil war, was attended by the general incidents of a regular war, has been so frequently declared here, that nothing further need be said on that point.

The object of the National Government, indeed, was neither conquest or subjugation, but the overthrow of the insurgent organization, the suppression of insurrection, and the re-establishment of legitimate authority. But in the attainment of these ends, through military force, it became the duty of the National Government, wherever the insurgent power was overthrown, and the territory which had been dominated by it was occupied by the national forces, to provide as far as possible, so long as the war continued, for the security of persons and property, and for the administration of justice.

The duty of the National Government in this respect was no other than that which devolves upon the government of a regular belligerent occupying, during war, the territory of another belligerent. It was a military duty, to be performed by the President as commander-in-chief, and entrusted as such with the direction of the military force by which the occupation was held.

What that duty is, when the territory occupied by the national forces is foreign territory, has been declared by this

court in several cases arising from such occupation during the late war with Mexico. In the case of *Leitensdorfer v. Webb*, 20 How., 176, the authority of the officer holding possession for the United States, to establish a provisional government was sustained; and the reasons by which that judgment was supported, apply directly to the establishment of the Provisional Court in Louisiana. The cases of *Jecker v. Montgomery*, 13 How., 498; 18 How., 110; *Cross v. Harrison*, 16 How., 164; *United States v. Rice*, 4 Wheat., 216, and *Texas v. White*, 7 Wall, 700, may also be cited in illustration of the principles applicable to military occupation.

We have no doubt that the Provisional Court of Louisiana was properly established by the President in the exercise of his constitutional authority during the war, or that Congress had power, upon the close of the war and the dissolution of the Provisional Court, to provide for the transfer of cases pending in that court, and of its judgments and decrees, to the proper courts of the United States. The case, therefore, being properly here, we will proceed to dispose of it.<sup>1</sup> \* \* \*

For a more elaborate consideration of the principles and authorities on which the right and duty of a power, holding in military occupation hostile territory, to govern the same and administer justice therein depends, we refer our readers to the opinion of Judge PEABODY, in *United States v. Reiter*, 4 Am. Law Register, N. S., 434.

For an account of the U. S. Provisional Court of Louisiana, we refer readers to 4 Am. Law Register, N. S., 65.

For a more complete account of the Provisional Judiciary of Louisiana during the occupation by the Federal forces, we refer also, to 4 Am. Law Reg. N. S., 257

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*Circuit Court of the United States, Southern District of  
New York.*

THE UNITED STATES v. THE JUDGES OF THE SUPERIOR COURT  
OF THE CITY OF NEW YORK.

The power of the Circuit Court of the United States to issue a writ of *Prohibition* to another court is confined to cases where the issuing of such a writ is necessary for the exercise of its own jurisdiction, and is agreeable to the principles and usage of law.

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<sup>1</sup>The rest of the opinion is not of general interest.—Ed. A. L. R.